## UNITED STATES DISTRICT COURT DISTRICT OF MAINE

HARVEY HARRISON,	)
	)
PLAINTIFF	)
	)
v.	) Civil No. 02-104-P-H
	)
CORRECTIONAL MEDICAL	)
SERVICES A/K/A SPECTRUM	)
BEHAVIORAL SERVICES,	)
	)
DEFENDANT	)

## ORDER AFFIRMING RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

The United States Magistrate Judge filed with the court on March 17, 2003, with copies to counsel, his Recommended Decision on Defendants' Motion for Partial Summary Judgment. Objections to the Recommended Decision were filed by the defendant on March 31, 2003, and by the plaintiff on April 1, 2003. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision, and determine that no further proceeding is necessary.

The defendant's major complaint is with the First Circuit's (arguably dictum) description of Maine's scope of *respondent superior* and its broad acceptance of Restatement (Second) of Agency § 219(2)(d) ("aided in accomplishing the tort by the

existence of the agency relation"). Costos v. Coconut Island Corp., 137 F.3d 46, 49

(1st Cir. 1998) (discussing McLain v. Training & Dev. Corp., 572 A.2d 494 (Me.

1990)). But until the First Circuit or the Maine Law Court changes or clarifies this

description, it governs, especially in a case like this where the employee's very

access to the prisoner and any influence she had over him came from her

employment.

It is therefore **Ordered** that the Recommended Decision of the Magistrate

Judge is hereby **Adopted**. The defendant's motion for partial summary judgment is

**Granted** as to any claim for punitive damages and otherwise is **Denied**.

SO ORDERED.

**DATED: APRIL \_\_\_\_\_, 2003** 

D. Brock Hornby UNITED STATES DISTRICT JUDGE

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